

ORDER ON I.A.NO.VII UNDER ORDER
1 RULE 10(2) OF CPC

This is an application filed by the defendant No.4 under Order 1 Rule 10(2) of C.P.C., to transpose the defendant No.4 as plaintiff No.2 in the above case.

2. The defendant No.4 contending in the annexed affidavit that, the Plaintiff has filed the above suit against the defendants for right over a cart track under easementary right and permanent injunction from interfering with the peaceful possession and enjoyment of the said cart track by the plaintiff. The plaintiff has arrayed him as the defendant No.4 in the above case, he is the neighbouring land owner of the plaintiff and his land comes under Sy.No.10/2 measuring 1 acre 16 guntas of Jalikatte Village, which is situated towards southern side of the plaintiff's land. the plaintiff after entering the lands of defendants No.1 to 3, enters his land to reach his land which comes under old Sy.No.10/2 and new Sy.No.10/10 of Jalikatte Village. He also have to enter his land after crossing over the lands of defendants No.1 to 3 to reach his land and defendants No.1 to 3 who are related to reach other and by colluding with each other have also obstructed him from

entering his land through their lands i.e., 'B' schedule property. He making use of cart track which is in existence in the lands of defendants No.1 to 3 from past many years and earlier his father and forefathers have also used the said cart track to enter their land without his obstructions from any body. The said cart track which is morefully described at the 'C' schedule is the easement of necessity for him and also for the plaintiff and both the plaintiff and himself have got common cause and interest.

3. Further contended that due to illegal act of the defendants No.1 to 3 in obstructing their free movement through their lands to reach their land, it has become very difficult for him to reach his land easily and there is no other alternative way to reach his land except the 'B' schedule lands.

4. Due to the act of defendants No.1 to 3 his right and interest has been severally affected and his land is an Arecanut garden and more care have to be taken over the land and since the defendants No.1 to 3 have closed the cart track by dumping soil and placing wild thorn over it, it has become very difficult for him to reach his land. Hence, this application.

5. Per contra, the counsel for the plaintiff has opposed by filing the objection to the said application and denied the entire application averments and stated that, the application filed by the defendant No.4 is not at all maintainable under law. There is no supporting documents produced. Hence, above said application is not maintainable in law. The application is made only with a view to drag on the matter and thereby harass by the defendant. The defendant is dragging the court proceedings by making application after application and thereby stalling the progress of the case. The present application is against the law and procedure. If the application is dismissed no harm or prejudice will be caused to applicants. Whereas if the application is allowed, the defendant will be put to irreparable loss and injury. Hence, prayed to dismiss the application with exemplary costs.

6. Heard by the both counsels and perused the materials on record.

7. The following point would arise for my consideration;

1. Whether the defendant No.4 has made out sufficient grounds to allow the IA No.7 ?

2. What order?

8. My answers to the above points are as follows:

Point No.1 : In the ***Negative***

Point No.2 : As per the final order for the following:

REASONS

9. **Point No.1:** This is an application filed by the defendant No.4 when the case was posted for written statement by defendant No.3.

10. As could be seen from the affidavit accompanied by the application the suit is filed by the plaintiff against the defendant to grant easement of prescription and necessity and permanent injunction. This suit has been initiated against the defendants No.1 to 4 by stating that in order reach the land bearing Sy.No.10/2 he has to pass through the land of the defendant No.1 to 4. But they obstructed to access the cart road to reach his land. When such being the case the plaintiff has

filed this suit for the redress of his grievance. Therefore, the plaintiff is the master of his case. Whether the defendant No.4 has to be transposed as the plaintiff No.2 to sail along with him is depending upon the decision of the plaintiff as well. Since he has filed objection to the present application it is his opinion that he decide to sail the ship himself alone. After filing this suit the defendant No.4 express his grievance against defendants No.1 to 3 for the reason best known to him. Therefore, when there is a objection for the plaintiff for transposition of defendant No.4 as plaintiff No.2 this court cannot compel him to accept the defendant No.4 as plaintiff No.2. Hence in view of the above discussion this court answer point No.1 in the ***Negative.***

11. **Point No.2:** For the above said reasons this Court proceeds to pass the following;

ORDER

The I.A.No.VII filed by the defendant No.4 under Order 1 Rule 10(2) of C.P.C is hereby **rejected.**

Call on :19/12/2023.

**II Addl.Civil Judge & JMFC.,
Chitradurga.**